

April 13, 2020

Montgomery County Council
Stella Werner Council Office Building
100 Maryland Ave.
Rockville, MD 20850

Re: Letter from Retired Immigration Judge Schmidt in Support of Legal Representation for Detained Immigrants

Dear Montgomery County Council:

I write to urge you to vote in support of funding the universal representation pilot program, which would provide legal representation for Montgomery County residents who are detained and in deportation proceedings. I write as a retired immigration judge who served for over two decades under the Executive Office for Immigration Review (EOIR) and who has a keen understanding of the role and necessity of due process in deportation proceedings. By implementing a detained representation program in Montgomery County, the Council would follow in the footsteps of over two dozen jurisdictions and make measurable progress in ensuring that Montgomery residents avail themselves to the immigration relief established by Congress. I commend the Council for taking initial steps in recognizing the need to ensure due process for its immigrant residents facing deportation by including funding for immigrants in removal proceedings.

Now, during the COVID-10 pandemic, a more critical time than any to protect detained immigrant residents and mixed status families of Montgomery County.

For 21 years, I served as an Appellate Judge on the Council of Immigration Appeals, and a U.S. Immigration Judge at the Arlington Immigration Court.¹ The Arlington Immigration Court is also the court where detained Montgomery residents appear for their immigration cases. I was the Chair of the Appeals Council for six years. Though I am since retired, I follow with great interest and concern the immigration court's troubling trajectory.

There is a real crisis in the immigration system today: the attack on due process in the U.S. Immigration Court. This crisis has been many administrations in the making. However, the current administration has done more damage to due process more quickly than any prior administration. The administration's insistence on quotas for immigration judges, the attempted

¹ For more information regarding my history as an Immigration Judge, including an overview of my decisions, please see *Judge Paul W. Schmidt*, TRAC Immigration (2018), <https://trac.syr.edu/immigration/reports/judgereports/00220WAS/index.html>.

dissolution of the Legal Orientation Program, combined with increased immigration enforcement, and inhumane detention policies, has eradicated any semblance of due process for immigrants facing deportation.

Under the U.S. Constitution and our nation's immigration laws, all immigrants facing removal are entitled to due process. No person, regardless of their background, history, or immigration status should be denied access to justice. The only way to ensure that a Montgomery County resident in deportation proceedings has due process in the current immigration system is to provide competent legal representation. Without an attorney, there is simply no other way an immigrant can navigate the extremely complex legal immigration system—a dynamic I witnessed countless time in my own court room.

When an immigrant appears without an attorney, the Immigration Judge must paradoxically rely on the attorney for the government; the person who is fighting to deport the immigrant from this country, to present the immigrant's case. Despite a judge's best efforts, it is simply not possible to ensure that the immigrant had all of the relevant facts about his or her case presented and that all legal defenses to removal have been explored, explained, and understood. While some immigration judges might like to believe that they are capable of ensuring that those appearing before them without counsel have the same chance of relief as those appearing with counsel, I know from my experience that this is simply *not* possible. I also know that my courtroom ran more efficiently when all parties were represented; with frivolous arguments, continuances, and appeals universally decreasing. Simply put, a good judge knows that having competent counsel representing both parties before it yields a more efficient and just outcome.

Importantly, representation by an attorney dramatically enhances any immigrant's chance of success in immigration court, but it no means guarantees success. Our nation's immigration laws are rigid, often by design. Relief is only available in those cases where the law explicitly permits it—representation does not guarantee protection from deportation, but it does significantly enhance due process and fairness in an individual's case. The erstwhile vision of the Immigration Court, the vision which I helped develop in the late 1990s, was for the court to “be the world's best administrative tribunal[s] guaranteeing fairness and due process for all.” Instead, the U.S. Department of Justice's ever-changing priorities and morbid fascination with increased detention as a means of deterrence have turned the Immigration Court system into a tool of enforcement. Local communities and counties, such as Montgomery, must take steps in response to protect community members and their families and ensure that due process is not simply an aspiration, but a guarantee.

I urge the Council to vote in favor of funding the universal representation pilot program. If you have any questions, please do not hesitate to contact me at [PHONE] or [EMAIL].

Sincerely,

Judge Paul W. Schmidt (Retired)